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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/083,093	02/26/2002	Jeffrey J. Shea	10557/266546	5422
30559	7590	01/23/2006	EXAMINER	
CHIEF PATENT COUNSEL SMITH & NEPHEW, INC. 1450 BROOKS ROAD MEMPHIS, TN 38116				RAMANA, ANURADHA
		ART UNIT		PAPER NUMBER
		3733		

DATE MAILED: 01/23/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	10/083,093	SHEA ET AL.
	Examiner	Art Unit
	Anu Ramana	3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 11/10/2005.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1-8, 10, 13-18, 25-27 and 29-38 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1-8, 10, 13-18, 25-27 and 29-38 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 10/14/2003 is/are: a) accepted or b) objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some * c) None of:
1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ . |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ . | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ . |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-8, 10, 13-18, 25-27 and 29-38 are rejected under 35 U.S.C. 102(b) as being anticipated by Oehy et al. (US 5,645,606).

Oehy et al. disclose an acetabular shell or cup 5 having: a first surface, a second surface oriented toward bone; openings 12 extending from the first surface to the second surface wherein each opening 12 has an extended nonthreaded frustoconical taper section 25, a rounded section with a concave surface 25a beginning at a narrow end of the frustoconical section; each opening 12 capable of receiving any type of fastening element or insertion member; and insertion member such as a cover or “plug” 15 or a fastening element 14 with spherical undersurfaces (16a, 14a) seatable in surface 25a in a plurality of angular positions and sealing off through-hole 12 (Figs. 1-2, col. 2, lines 45-67, col. 3 and col. 4, lines 1-6).

Regarding claims 17, 26 and 30, Oehy et al. disclose that their acetabular prosthesis including an outer shell 5 and an inner shell or “liner” 6 is used as a joint socket 2 in a hip joint prosthesis wherein a joint head 3 is fastenable in a femur by a shank part or “stem” and articulates with joint socket 2 (Fig. 2 and col. 2, lines 28-31).

The method steps of claims 27 and 29-38 are performed during use of the Oehy et al. acetabular prosthesis in a hip joint prosthesis for hip arthroplasty.

Response to Arguments

Applicant's arguments submitted under "REMARKS" in the response filed on November 10, 2005 have been considered but are not persuasive for the following reasons.

Oehy et al. disclose that openings 12 have a conically shaped inner end portion and an approximately spherical support surface 25a formed between the end portion and the circumferential part 27 (col. 3, lines 3-8). Oehy et al. disclose that a closure plug or "insertion member" 15 can be placed in opening 12 wherein insertion member 15 has a sealing surface 16a that clearly contacts the frustoconical inner end portion when member 15 is inserted into opening 12.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anu Ramana whose telephone number is (571) 272-4718. The examiner can normally be reached on Monday through Friday between 8:00 am to 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eduardo Robert can be reached on (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

AR *Anuadha Ramana*
January 19, 2006



EDUARDO C. ROBERT
SUPERVISORY PATENT EXAMINER